

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHILLIP W. BAXTER, and NOLA BAXTER,
Individually and as husband and wife,

Plaintiffs,

v.

NATIONAL SAFETY COUNCIL, a federally
chartered non-profit corporation, and
EVANGELOS GALOUNIS, and JANE DOE
GALOUNIS, individually and as husband and
wife,

Defendants.

CASE NO. C05-0752C

ORDER

This matter comes before the Court on the Plaintiffs' Motion to Remand (Dkt. No. 9). Having reviewed the materials submitted by the parties and determined that oral argument is not necessary, the motion is DENIED for the reasons set forth below.

I. BACKGROUND

Plaintiffs filed this action in King County Superior Court alleging state law claims of breach of contract, violation of Wash. Rev. Code § 49.48 et. seq. and Wash. Rev. Code § 49.52 et. seq., fraudulent concealment and intentional misrepresentation, negligent misrepresentation, wrongful discharge, and violation of the Washington Consumer Protection Act, Wash. Rev. Code § 19.86 et. seq. The

1 Defendants subsequently removed the action to this Court under 28 U.S.C. § 1441. A settlement letter
2 sent by the Plaintiffs to the Defendants on April 7, 2004 stating that Plaintiffs “reasonably offer[] to settle
3 [their] case for \$225,000” served as sole support for removal. (Notice of Removal, Ex. A). After
4 removal, the Plaintiffs corresponded with NSC several times attempting to settle the case. Plaintiffs’
5 counsel has also communicated to Defendants’ counsel that Plaintiffs would consider settlement offers of
6 less than \$75,000. With no settlement reached, the Plaintiffs have moved that the case be remanded to
7 King County Superior Court based on insufficiency of the jurisdictional amount required under 28 U.S.C.
8 § 1332. Diversity of citizenship among the parties is not contested.

9 **II. REMOVAL STANDARDS AND APPLICATION**

10 Under 28 U.S.C. § 1441(a) a defendant may remove “any civil action brought in a State court of
11 which the district courts have original jurisdiction.” The district courts have original jurisdiction of all civil
12 actions where the matter in controversy exceeds the sum of \$75,000 and is between citizens of different
13 states. 28 U.S.C. § 1332 (2005).

14 Where it is not facially evident from the complaint that the amount in controversy exceeds
15 \$75,000, the removing party must prove by a preponderance of the evidence that the amount in
16 controversy meets the jurisdictional requirement. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d
17 1089, 1090 (9th Cir. 2003). A case should be remanded to state court where doubt regarding the amount
18 in controversy exists. *Id.* Conclusory allegations of the amount in controversy are insufficient to support
19 removal. *Id.* However, defendants may rely on facts presented in the removal motion or any “summary
20 judgement type” evidence relevant to the amount in controversy at the time of removal. *Valdez v. Allstate*
21 *Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

22 The Ninth Circuit does not follow the “converse legal certainty” test when considering a motion
23 for remand. Under that test, the party invoking federal jurisdiction has the burden of proving that it does
24 not appear to a legal certainty that the claim is actually for less than the requisite jurisdictional amount.
25 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir. 1996) (citing *Hale v. Billups of*

1 *Gonzales, Inc.*, 610 F. Supp. 162 (M.D. La. 1985)). The Ninth Circuit cautioned that the test may result
2 in an unwarranted expansion of federal diversity jurisdiction if applied when the plaintiff's complaint does
3 not specify a particular amount of damages. *Id.* Therefore, where it is not facially evident from the
4 complaint, the defendant must prove by a preponderance of the evidence that the amount in controversy
5 exceeds \$75,000 to remove a case to federal court. *Matheson*, 319 F.3d at 1090; *id.* at 404.

6 Here, it is not facially evident from the complaint that the amount in controversy exceeds the
7 jurisdictional requirement under 28 U.S.C. § 1332. There are no *ad damnum* clauses in the Complaint
8 other than Paragraph 13, where it is alleged that the Plaintiffs are entitled to treble damages up to \$10,000.
9 Therefore, the Defendants must prove by a preponderance of the evidence that the amount in controversy
10 exceeds \$75,000. The Defendants have done so.

11 The Plaintiffs' April 7, 2004 settlement letter suffices to meet the Defendants' burden. A
12 settlement letter is relevant evidence of the amount in controversy if it reflects a reasonable estimate of the
13 plaintiff's claim. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). For example, the defendant
14 in *Cohn* provided a single settlement letter from the plaintiff asking for more than \$100,000. *Id.* The
15 court held that this single letter was enough to support removal. *Id.*; *see also Singer v. State Farm Mut.*
16 *Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (plaintiff's admission that amount in controversy
17 exceeded jurisdictional requirement sufficient to establish amount in controversy above that amount). Just
18 as in *Cohn*, Defendants in this case relies exclusively on a single settlement letter sent by Plaintiffs
19 demanding \$225,000.

20 Furthermore, just as in *Cohn*, Plaintiffs do not argue that the settlement demand was inflated or
21 was not an honest assessment of damages. *See Cohn*, 281 F.3d at 840. In fact, the settlement letter itself
22 states that the Plaintiffs "*reasonably offer[] to settle [their] case for \$225,000.*" (Notice of Removal, Ex.
23 A) (emphasis added). While the Plaintiffs hint that the offer was inflated, (Pl.'s Resp. 3), the fact that the
24 settlement letter was fifteen pages long and addressed, in detail, each of the Plaintiffs' claims in the
25 complaint cautions against a finding that the letter was not an honest assessment of damages. By citing

1 Plaintiffs' April 7, 2004 settlement letter the Defendants prove by a preponderance of the evidence that the
2 amount in controversy exceeds \$75,000. *Cf. Valdez*, 372 F.3d at 1117 (defendants's statement that it
3 believed amount in controversy exceeded \$75,000 did not constitute preponderance of the evidence).

4 **III. PLAINTIFFS' ARGUMENTS FOR REMAND**

5 Plaintiffs argues that other than his unpaid salary claim, the rest of his claims are "pie in the sky"
6 and therefore the amount in controversy is less than \$75,000. (Pl.'s Resp. 4). However, remand is not
7 justified simply because the defendant has a valid defense. *St. Paul Mercury Indem. Co. v. Red Cab Co.*,
8 303 U.S. 283, 292 (1938). Thus, Plaintiffs' arguments that most of his claims are likely to be denied are
9 irrelevant for establishing the amount in controversy.

10 The Plaintiffs also argue that the amount in controversy is less than \$75,000 because he is now
11 willing to settle for less than \$75,000. However, the settlement offers below \$75,000 have only come
12 after the Defendants removed the case to federal court. (Pl.'s Mot. for Remand 4). The Fifth Circuit has
13 held that anything filed by the plaintiff after a defendant has removed the case to federal court is irrelevant.
14 *de Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995); *see also St. Paul Mercury*, 303 U.S. at 292
15 (after removal to federal court, the plaintiff's stipulation, affidavit or amendment of pleadings reducing the
16 claim below the jurisdictional requirement does not deprive the district court of jurisdiction). Without this
17 rule plaintiffs could seek to manipulate their state pleadings to avoid federal court while retaining the
18 possibility of recovering greater damages in state court following remand. *de Aguilar*, 47 F.3d at 1410.
19 Therefore, the \$225,000 settlement offer before removal is more persuasive than the post-removal
20 settlement offers below the required amount.

21 Finally, that the defendants might be willing to settle for \$1,000 does not establish that the amount
22 in controversy is less than \$75,000, it merely establishes that a controversy exists. The fact that the parties
23 might be willing to settle below \$75,000 does not mean that the amount in controversy is also below that
24 amount. Such an argument ignores the inherent nature and purpose of negotiated settlements. *See Sayre*
25 *v. Potts*, 32 F. Supp. 2d 881, 888 (S.D. W. Va. 1999) (plaintiff's post-removal settlement offer \$500

1 below jurisdictional requirement supports idea that amount in controversy is greater than required because
2 costs and hazards of litigation are exchanged for receiving known amounts). Therefore, post-removal
3 settlement offers do not undermine the preponderance of the evidence established by the pre-removal
4 settlement demand of \$225,000.

5 For these reasons, the Plaintiffs' motion for remand is DENIED.

6 SO ORDERED this 13th day of September, 2005.

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8 A handwritten signature in black ink, appearing to read "John C. Capron", is written over a horizontal line.

9 UNITED STATES DISTRICT JUDGE
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